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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/088,778 | 07/02/2002 | Peter A. Crouch | ARD106USA | 9526 |

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| EXAMINER |
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FOREMAN, JONATHAN M

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| ART UNIT | PAPER NUMBER |
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3736

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--|--------------------------------------|--|
| Office Action Summary | Application No. 10/088,778 | Applicant(s) CROUCH ET AL. | |
| | Examiner Jonathan ML Foreman | Art Unit 3736 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,9-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

((e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 – 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 171,002 to Donovan.

In reference to claims 1 – 3 and 7, Donovan discloses applicant's claimed invention (Figure 1) including, a housing (a) having a closable lid (d), the lid (d) being securable to the housing to close the housing (Col. 1, lines 21 - 40), the housing and the lid together defining a closed volume when the lid is secured to the housing (Col. 1, lines 31 – 33; Figure 1), at least part of the housing having a strainer member (c) having a plurality of openings adapted to allow water entering the housing to escape through the strainer member, and capable to collect, and retain particulate matter carried by the water, so that upon securing the lid in position, particulate matter is capable of being trapped within the closed volume. The openings are uniform and sufficiently small to ensure that human cells (hair) are retained (Figure 2). The housing is of dimensions to allow it to be removably received within and seal the outlet of a bath, shower or wash basin (Col. 1, lines 16 - 20), so as in use, to collect particulate matter from the water draining from the at least one of a bath, shower, wash basin and mortuary table, contain the particulate matter and be adapted for transport to a remote location. The lid is securable on the housing by screw threads (e).

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3. Claims 1 – 3 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,067,669 to Peterson et al.

In reference to claims 1 – 3 and 7, Peterson et al. discloses applicant's claimed invention (Figure 2) including, a housing (12) having a closable lid (50), the lid (50) being securable to the housing to close the housing (Col. 2, lines 37 - 40), the housing and the lid together defining a closed volume when the lid is secured to the housing, at least part of the housing having a strainer member (30) having a plurality of openings (38) adapted to allow water entering the housing to escape through the strainer member, and capable to collect, and retain particulate matter carried by the water (Col. 2, lines 50 – 53), so that upon securing the lid in position, particulate matter is capable of being trapped within the closed volume. The openings are uniform and sufficiently small to ensure that human cells (hair) are retained (Col. 2, lines 50 – 53). The housing is of dimensions to allow it to be removably received within and seal the outlet of a bath, shower or wash basin (Col. 1, lines 50 - 56) so as in use, to collect particulate matter from the water draining from the at least one of a bath, shower, wash basin and mortuary table, contain the particulate matter and be adapted for transport to a remote location.. The lid is securable on the housing by screw threads (18, 20).

4. Claims 1 – 3, 7, 9 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,088,844 to Killham.

In reference to claims 1 – 3, 7, 9 and 13, Killham discloses applicant's claimed invention (Figure 2) including a flexible liner (28) a housing (20) having a closable lid (31), the lid (31) being securable to the housing to close the housing (Col. 4, lines 16 - 23), the housing and the lid together defining a closed volume when the lid is secured to the housing, at least part of the housing having a strainer member (42) having a plurality of openings adapted to allow water entering the housing to escape through the strainer member, and capable to collect, and retain particulate matter carried by

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the water (Col. 5, lines 3 - 4), so that upon securing the lid in position, particulate matter is capable of being trapped within the closed volume. The openings are uniform and sufficiently small to ensure that cells (hair) are retained (Col. 5, lines 3 - 4). The housing is of dimensions to allow it to be removably received within and seal the outlet of a bath, shower or wash basin (Col. 3, lines 56 - 57) so as in use, to collect particulate matter from the water draining from the at least one of a bath, shower, wash basin and mortuary table, contain the particulate matter and be adapted for transport to a remote location.. The lid is securable on the housing by screw threads (Col. 4, lines 27 - 33).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 171,002 to Donovan as applied to claim 2 above, and further in view of U.S. Patent No. 4,232,407 to Williams.

In regards to claims 4 and 5, Donovan discloses a strainer for positioning in the outlet of a wash basin having a plurality of openings (e), but fails to disclose the openings being non-uniform and the openings in the central part being smaller than those located toward the edges. Williams discloses a strainer for positioning within an outlet of a wash basin (Col. 1, lines 5 - 7) having openings of a non-uniform size. The openings in the central part are shown (Figure 1) to be smaller than those located toward the edges (15). It would have been obvious to one having ordinary skill in the art, to modify the openings as disclosed by Donovan to be a non-uniform size with the larger

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openings being toward the edges as taught by Williams in order to retain solid materials of desired sizes (Col. 2, lines 42 – 45). The functional statement set forth in a “whereby” clause does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Mason*, 244, F.2d 733, 114 USPQ 127 (CCPA 1957).

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,088,844 to Killham in view of U.S. Patent No. 4,752,035 to Felder and U.S. Patent No. 4,232,407 to Williams.

In reference to claim 14, Killham discloses applicant's claimed invention (Figure 2) including a (28) a generally cylindrical, tubular housing (20) having an unobstructed open upper end (Col. 5, lines 6 – 10), an open bottom end and a closable lid (31), the lid (31) being securable to the housing to close the housing (Col. 4, lines 16 - 23), the housing and the lid together defining a closed volume when the lid is secured to the housing, at least part of the housing having a strainer member (42) having a plurality of openings adapted to allow water entering the housing to escape through the strainer member, and capable to collect, and retain particulate matter carried by the water (Col. 5, lines 3 - 4), so that upon securing the lid in position, particulate matter is capable of being trapped within the closed volume. The openings are uniform and sufficiently small to ensure that cells (hair) are retained (Col. 5, lines 3 - 4). The housing is of dimensions to allow it to be received within and seal the outlet of a bath, shower or wash basin (Col. 3, lines 56 - 57). The lid is securable on the housing by screw threads (Col. 4, lines 27 - 33). Killham discloses the housing being constructed of any desired material (Col. 5, lines 38 – 43) and dimensioned to form a fluid tight seal with a drain outlet, but fails to disclose the material being rubber or synthetic rubber material. However, Felder discloses a device for use in connection with a drain outlet wherein the housing is formed of a

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rubber or synthetic rubber material (Col. 1, lines 42 – 47). It would have been obvious to modify the housing as disclosed by Killham to be formed of a rubber or synthetic rubber material as taught by Felder or any other material as desired. The selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. *In re Lesbin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Killham discloses a strainer for positioning in the outlet of a wash basin having a plurality of openings (e), but fails to disclose the openings being non-uniform and the openings in the central part being smaller than those located toward the edges. Williams discloses a strainer for positioning within an outlet of a wash basin (Col. 1, lines 5 – 7) having openings of a non-uniform size. The openings in the central part are shown (Figure 1) to be smaller than those located toward the edges (15). It would have been obvious to one having ordinary skill in the art, to modify the openings as disclosed by Killham to be a non-uniform size with the larger openings being toward the edges as taught by Williams in order to retain solid materials of desired sizes (Col. 2, lines 42 – 45). It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject

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matter shown in the prior art reference does not possess the characteristic relied upon. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); *In re Ludtke*, 441 F.2d 664, 169 USPQ 566 (CCPA 1971).

8. Claims 10 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,088,844 to Killham in view of U.S. Patent No. 4,752,035 to Felder.

In regards to claims 10 and 15, Killham discloses providing an evidence collection device (Figure 2) including a generally cylindrical, tubular housing (20) having an having an unobstructed open upper end (Col. 5, lines 6 – 10), an open bottom end and a predetermined central volume, a closable lid (31), the lid (31) being securable to the upper end of the housing to close the housing (Col. 4, lines 6 - 7), the housing and the lid together defining a closed volume when the lid is secured to the housing (Figure 3), a strainer member (42) connected to the bottom end of the housing (Col. 4, line 66 – Col. 5, line 3) and defining a bottom end of the volume, having a plurality of openings sufficiently small to ensure that human cells (hair) are retained (Col. 5, lines 3 - 4), locating the device, with the lid in a closed position, within the outlet of a bath, shower or basin (Col. 3, line 56 – 57; Col. 4, line 21), allowing an individual to bath, shower or wash in the bath, shower or basin, opening the lid, allowing water to pass through the strainer member, particulate matter carried into the housing being unable to pass through the strainer member (Col. 5, lines 3 - 4), securing the lid to the housing (Col. 4, lines 6 - 7), and removing the device form the outlet (Col. 4, lines 49 – 52; Col. 5, lines 6 - 10). Killham discloses the housing being constructed of any desired material (Col. 5, lines 38 – 43) and dimensioned to form a fluid tight seal with a drain outlet, but fails to disclose the material being rubber or synthetic rubber material. However, Felder discloses a device for use in connection with a drain outlet wherein the housing is formed of a rubber or synthetic rubber material (Col. 1, lines 42 – 47). It would have been obvious to modify the housing as disclosed by

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Killham to be formed of a rubber or synthetic rubber material as taught by Felder or any other material as desired. The selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Killham discloses matter accumulating in the closed volume (Col. 5, lines 3 – 4) but fails to disclose transporting the particulate matter to a remote location and analyzing the collected matter contained in the volume for evidence. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to remove the device from the drain (i.e. transport the particulate matter to a remote location) and analyze the collected matter contained in the volume for evidence of fleas or other parasites.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,088,844 to Killham as applied to claim 10 above, and further in view of DE 4434544 C1 to Hartmann et al.

In reference to claim 11, Killham discloses collecting evidence in a bath, shower or wash basin, but fails to disclose wiping the bath, shower or wash basin using a cloth or wipe to collect matter adhering thereto. Hartmann et al. discloses a wipe (2) for collecting evidence from a victim or a perpetrator by wiping. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wipe the bath, shower or basin having the collecting device as disclosed by Killham, when used by a victim or perpetrator, in order to gather and protect any comparative material, as taught by Hartmann et al., remaining in the shower, bath or wash basin.

Response to Arguments

Applicant's arguments filed 1/12/06 have been fully considered but they are not persuasive. Applicant asserts that neither Donovan, Peterson et al. nor Killham are removably received within an outlet. However, the Examiner disagrees. The term “removably” and phrase “to collect

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particulate matter from the water draining from the said at least one of a bath, shower, wash basin and mortuary table, contain the particulate matter and be adapted for transport to a remote location” are merely functional or intended use limitations. Each of the devices as disclosed by Donovan, Peterson et al. and Killham are fully capable of being removed from an outlet.

Furthermore, it has been held that the recitation that an element is “adapted to “perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Applicant asserts that Killham fails to disclose an opening that is unobstructed at its top. However, Killham discloses an opening that is unobstructed at its top (Col. 5, lines 6 – 10) in that the lid (30) can be removed from the remainder of the body. Additionally, Applicant asserts that Killham fails to disclose a liner. However, claim 13 merely states, “a flexible liner” and “the housing being located in an outlet of the liner”. Killham discloses a liner (28) and the housing being located in an outlet of the liner (28) in that the liner (28) disclosed by Killham lines the inside of the outlet of the sink (Col. 4, line 38) and the housing is positioned within the outlet of the liner (Figure 3).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 1,203,530 to Gessler and U.S. Patent No. 3,727,763 to Arenskov.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the

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THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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